

6091 *Subways*



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 23, 1997

Honorable William V. Hegler
Lancaster County Magistrate
Post Office Box 1809
Lancaster, South Carolina 29721

Dear Magistrate Hegler:

In a letter to this office you indicated that a local merchant had cashed a payroll check given an employee by a business that is out of state. You indicated that the check was returned "NSF" and the business is now closed. You questioned if an arrest warrant could be issued in such circumstances. I assume that the party presenting the check did not know that the check would be returned "NSF".

S.C. Code Section 34-11-60(a) defines the offense of drawing and uttering fraudulent checks. As to checks passed to a subsequent party by endorsement, pursuant to S.C. Code Section 34-11-70(d):

For purposes of this chapter, subsequent persons receiving a check, draft or other written order by endorsement from the original payee or a successor endorsee have the same rights that the original payee has against the maker of the instrument, if the maker of the instrument has the same defenses against subsequent persons as he may have had against the original payee. However, the remedies available under this chapter may be exercised by only one party in interest.

Therefore, typically, an individual receiving a check by endorsement can proceed in the manner authorized by such provision.

However, you indicated that in the situation you cited, the check was from an out of state business. The criminal offense of issuing a fraudulent check is only applicable to checks made or delivered in this State. Inasmuch as the business which gave the check was an out-of-state business, unless it can be shown that the check was in fact actually given or delivered in this State, the

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check would have to be prosecuted in the state where it was given if possible. The merchant may wish to check if prosecution may be pursued in the other state. Of course, the merchant may also check with an attorney as to whether any civil remedy is available.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

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